



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.

Dallas, Texas 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 27, 2010

Release Number: 201101024

Release Date: 1/7/11

LEGEND

ORG - Organization name

XX - Date Address = address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

(Phone)

(Fax)

ORG

ADDRESS

CERTIFIED MAIL – RETURN RECEIPT

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated June 3, 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You did provide information stating that your organization has been inactive during the exam years and that there have been no operations or financial activities conducted or planned. As such, you fail to meet the operational requirements for continued exemption under section 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service

Department of the Treasury

230 S. Dearborn Street
MC 4923 CHI, Room 1700
Chicago, IL 60604-1505

Date: October 21, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough
Director of EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 12/31/20XX 12/31/20XX 12/31/20XX

LEGEND

ORG - Organization name XX - Date Address - address City - city
State - state CEO - CEO CO-1, CO-2, CO-3 & CO-4 - 1ST, 2ND, 3RD & 4TH
COMPANIES

ISSUE

Whether or not this organization is operating exclusively for *any* charitable, educational, or scientific reason under IRC section 501(c)(3).

FACTS

A. Organizational Information:

Articles of Incorporation & Amendments:

The organization was originally incorporated on February 11, 19XX as the **CO-1** under the Nonprofit Corporation Act of the District of Columbia. The corporation was organized exclusively to receive, administer and expend funds for the following charitable and educational purposes:

- to develop, conduct and administer educational and charitable programs directed toward the prevention and cure of substance abuse;
- to engage in other lawful charitable and educational activity as determined by its board of directors;
- to assist other charitable and educational organizations in the conduct of similar activities;
- to establish in the main office or elsewhere all departments and activities necessary to carry out the purposes of the corporation; and
- to engage in any and all lawful activities incidental to the foregoing purposes except as restricted herein:

On July 13, 19XX and January 20, 19XX, the original articles of incorporation were amended to change the name and the purpose, respectively. The name was changed to **ORG** and the purpose was changed as follows:

- to raise funds for distribution to charitable organizations engaged in causes for improving child safety and wildlife and environmental protection;
- to engage directly in activities beneficial to child safety and wildlife and environmental protection;

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- to establish in the main office or elsewhere all departments and activities necessary to carry out the purposes of the Corporation; and
- to engage in any and all lawful activities incidental to the foregoing purposes except as restricted herein.

Exemption:

Exemption was granted on June 3, 19XX as an organization described in Internal Revenue Code (IRC) section 501(c)(3) and 170(b)(1)(A)(vi).

B. Operational Information:

The organization's Form 990 for the year ending 12/31/20XX and 20XX was examined to ascertain if the entity was still operating for tax-exempt purposes. Sources and uses of revenue were reviewed to determine actual activities conducted by this organization.

1. Sources of Revenues:

Prior to the exam years, the organization's primary activity was the conduct of gaming activities. During the exam years, the organization did not conduct any activity. It received funds transferred from related organizations (**See Exhibit A**) but did not conduct any activity to solicit the funds. The funds were transferred under the direct order of CEO (CEO.) who was founder/creator, key employee, officer, board of director member or Chief Executive Officer (CEO).

Per an interview of CEO., it was stated that there is no future activities planned for this organization.

2. Uses of Funds:

For the examination years, the funds of the organization where used primarily to pay for legal fees and insurance. Some of the legal fees were paid with respect to a lawsuit filed by the charitable division of the Attorney General office of the State of State. That lawsuit claimed that this organization and its principals (**See Exhibit B**) made false statements and filed false returns to the State of State. The lawsuit was settled with prejudice in 20XX and held this organization along with CO-2, CO-3 and CO-4 severally and jointly liable for the payment of \$ administrative fine.

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	12/31/20XX	

Insurance payments were made with respect to blanket liability coverage and other areas unrelated to the organization operations (i.e. auto).

3. Governing Body –Tenuous (No Independent Board):

The organization has listed officers responsible for overseeing operations (**See Exhibit C**). Nevertheless, all books and records of the organization are maintained out of the offices of Address, City, State under the direct control of CEO, founder/creator.

LAW

Internal Revenue Code section 501(c)(3) provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the income Tax Regulations provides that in order to qualify for exemption an organization must be both *organized and operated* exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Treasury Regulations section 1.501(c)(3)-1(c)(1) states that, an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages *primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)*. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulations section 1.501(c)(3)-1(d)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

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		12/31/20XX

Treasury Regulations section 1.501(c)(3)-1(d)(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

Treasury Regulations section 1.501(c)(3) -(2) Charitable defined. —The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

Rev. Rul. 67-149, 1967-1 C.B. 133 provides that an organization is exempt under section 501(c)(3) of the Code where it was formed for the purpose of providing financial assistance to several different types of organizations themselves exempt under section 501(c)(3) even though it carried on no operations other than to receive contributions and incidental investment income and to make distributions to the exempt organizations at periodic intervals.

ARGUMENT

The ORG was originally created to administer educational and charitable programs. It later changed its purpose to raise funds and make contributions to other charitable organizations. During the audit years, this organization *did not* actually conduct any specific activities to

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distribute funds. In fact, it only received funds transferred from a related entity and made contributions to other related entities. All of the donor and donee entities are controlled by CEO.

CEO. has stated that there is no intention to continue activities with respect to this organization.

In accordance with Section 1.501(c)(3)-1(a)(1) of the income Tax Regulations, an organization must be both *organized and operated* exclusively for one or more exempt purposes. **Failure to meet either the organizational or operational test** will disqualify an organization from exemption under section 501(c)(3). This organization is not operated for exempt purposes, because it is not operating at all.

If evidence clearly indicates that the organization never will resume operating for an exempt purpose, as required by **1.501(c)(3)-1(e)(1)**, its exempt status should be revoked pursuant to **Proc. 84-46, 1984-1 C.B. 541**.

TAXPAYER'S POSITION

Taxpayer has not officially advocated a position but acknowledges that the organization is inactive and that there are no plans for future activity.

GOVERNMENT'S POSITION

Based upon the regulations and Code, we hold that your organization is **not** operated exclusively for *any* charitable, educational, or scientific purpose, thereby defeating the retention of exemption.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code.

Revocation of your exempt status will be effective as of January 1, 20XX. In accordance with this determination, you are required to file Federal income tax returns on Form 1120. Contributions to your organization are no longer deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code a copy of this letter will be sent to the appropriate State officials.

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On December 2, 20XX, the D.C. Circuit ruled that the Service will disclose our denials and revocations under section 6110 effective August 1, 20XX. *Tax Analysts v. IRS*, 350 F.3rd 100 (D.C. Cir. 20XX)